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Water, Wastewater & Wetlands

Wetlands Program Policy 90-2

Rare Species: Standards and Procedures for Determining Adverse Impacts to Rare Species Habitat (DWW Policy 90-2)

Issued: August 13, 1990

Purpose

The purpose of this policy is to clarify the rules regarding rare species habitat contained in the Wetlands Protection Regulations (The "regulations") at 310 CMR 10.37 and 10.59. The regulations provide a clear standard and specific procedural guidelines for determining whether a project will have an adverse effect (short or long term) on state listed (rare) species habitat and what effects can be mitigated.

Regulatory Standards

Coastal and inland regulations pertaining to projects which impact Rare Species wetlands are found at 310 CMR 10.37 and 10.59 respectively. Both sections refer to the regulations as the "issuing authority" (Conservation Commissions and the Department) and "the Program" (Natural Heritage and Endangered Species Program). The regulations provide that:

"... if a proposed project is found by the issuing authority to alter a resource which is part of the habitat of a state-listed species, such project shall not be permitted to have any short or long term adverse effects on the habitat of the local population of that species. A determination of whether or not a proposed project will have such an adverse effect shall be made by the issuing authority. However, the written opinion of the Program on whether or not a proposed project will have an adverse effect shall be presumed by the issuing authority to be correct. This presumption is rebuttable and may be overcome upon a clear showing to the contrary." (310 CMR 10.37 and 10.59, emphasis added).

Analysis

When work is proposed in a rare species habitat, the applicant shall have the burden of demonstrating to the issuing authority that the alteration will not adversely effect the local population of that species. In order to meet this burden, the applicant shall be required to: 1) identify the relevant habitat requirements of the rare species in question; 2) identify the characteristics of the resource areas and the important wildlife functions provided by the species; and 3) demonstrate that the proposed work will not alter any habitat characteristics.